IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.PD.No.1289 of 2003
and
C.M.P.No.9068 of 2003

Senniappa Gounder .. Petitioner

-Vs-

Ramasamy .. Respondent

This criminal revision petition is preferred under S.115 of The Code of Civil Procedure against the fair and decreetal order of the Subordinate Judge, Karur made in I.A.No.45 of 2003 in O.S.No.12 of 2001 and dated 27.1.2003.

!For Petitioner : Mr.Sekar
for M/s.Sarvabhauman Associates

^For Respondent : Mr.Venkateswaran
for Mrs.Hema Sampath
for Caveator

:ORDER

This revision is brought forth by the defendant in a suit aggrieved over an order of the learned Subordinate Judge, Karur, allowing an application for amendment of the plaint.
2. After hearing the rival submissions and perusal of the materials available, the Court is of the considered view that there is nothing to interfere in the order of the Court below.
3. It was a suit for return of the earnest money filed by the respondent/plaintiff alleging that an agreement for sale in respect of an immovable property was entered into between the parties on 17.9.1987, and since the demand made by the plaintiff was not complied with by the defendant, the owner of the property, there arose a necessity to file a suit for recovery of the earnest with interest. The said suit was interalia contested by the petitioner/defendant that the plaintiff was not entitled for the relief, since he has forfeited the right of return of the money; that he was never willing to perform his part of the contract, and hence, the suit must be dismissed. Pending the suit before the trial commenced, the instant application was filed by the respondent/plaintiff seeking amendment of the plaint to include the relief of specific performance directing the defendant to execute the sale

deed in favour of the plaintiff by receiving the balance of the sale consideration.

4. What was contended by the defendant before the lower Court and equally before this Court also as a revision petitioner is that the suit was filed four years prior to the instant application, and originally the suit was filed only for return of the earnest money specifically averring that the defendant's son made a refusal as to the performance of the contract; and that taking into consideration the time of the refusal as alleged in the plaint, the relief in the suit was thoroughly barred by time, and hence, the application should have been dismissed by the lower Court, and thus, the order of the lower Court, which is erroneous, has got to be set aside by this Court.

5. In answer to the above, the learned Counsel appearing for the respondentCaveator would urge that originally the Counsel who appeared for the plaintiff was instructed to file a suit for specific performance along with the other reliefs, but failed to do so; that when the plaintiff came to know about the same at a later stage, he changed his Counsel, and he has filed the instant application; that the lower Court has also made a scrutiny of the original plaint wherein the specific relief was originally typed and scored out; that the lower Court considering the same has allowed the application; that the contention of the revision petitioner's side that the relief was barred by time is neither legal nor sound, and hence, the lower Court's order has got to be sustained.

6. As could be seen, it was a suit for return of the earnest money, which was admittedly paid by the respondent/plaintiff to the petitioner/defendant. According to the respondent/plaintiff, the Counsel who appeared on behalf of the plaintiff originally, was instructed to file a suit for specific performance along with other reliefs, but he has not done so. The lower Court has rightly pointed out that on perusal of the original plaint, the prayer for specific performance of the contract was typed therein, but subsequently it has been scored out, and hence, there arose a necessity for the plaintiff to change his Counsel and file the instant application. The other contention of the revision petitioner's side that the relief was barred by time does not require any consideration at this stage, since the refusal what was found in the cause of action paragraph, was not made by the defendant, but by the son of the defendant, and hence, the question as to the limitation can be kept open to be agitated by both the parties at the time of trial. The Court does not see any legal impediment for allowing the amendment based on the original cause of action. The Court is unable to find any infirmity or illegality in the impugned order passed by the Court below.

7. In the result, this civil revision petition fails, and the same is dismissed, leaving the parties to bear their own costs. Consequently, connected C.M.P. is also dismissed.

Index: Yes
Internet: Yes

To:

The Subordinate Judge, Karur

nsv/